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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/411,576 09/22/89 MAGLICA

A 188167

EXAMINER

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ART UNIT PAPER NUMBER

291

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DATE MAILED: 11/13/90

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice re Patent Drawing, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, Form PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☒ 11 photocopies

Part II SUMMARY OF ACTION

- ☒ Claims is _____ are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
- ☐ Claims _____ have been cancelled.
- ☐ Claims _____ are allowed.
- ☒ Claims is _____ are rejected.
- ☒ Claims figure descriptions, drawing are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
- ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

1. The benefit of continuity only applies to the informal drawing under 35 USC § 120, in that Fig.8 shows the same flashlight as shown in parent applications: 06/648032; 06/828729; 07/034918; 07/222378; and 07/356361. However, the design of the flashlight in the formal drawing Figs. 1-4 does not get benefit of priority. The formal drawing shows a change to the Fig.8 flashlight which is not the same as the flashlight disclosed in the five parent applications. Note the difference in the attached copies:

In the formal drawing, the head is rounded. The informal drawing, however, shows an partially drawn Fig.8 flashlight head which is a direct embodiment of Fig.1. The Fig.1 head shows a distinct contour that marks a definite change in plane. Note A on the attached photoprints Figs.1-4, on the formal drawings, Fig.8 on the informal drawing, and the original drawings in the parent applications.

2. For preferred form the figure descriptions must be amended to read:

--Fig.1 is a front top perspective view of a miniature flashlight showing my new design;

Fig.2 is a side elevational view thereof, the other side being identical;

Fig.3 is a top plan view thereof;

Fig.4 is a bottom plan view thereof.--

Correction is required. 35 USC 112 par. 2, 37 CFR 1.117.

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3. Because of the description of the undisclosed side in Fig.2 -- and described -- must be added to the claim after "shown". Correction is required. 35 USC 112 par. 2, 37 CFR 1.117.
 4. For proper form (37 CFR 1.153), the claim must be amended to read: I claim: The ornamental design for a MINIATURE FLASHLIGHT as shown and described. Correction is required. 35 USC 112 par. 2, 37 CFR 1.117.
 5. The drawing is objected to for the following reasons:
 - b) The texture of the grip in all views must be completed for clarity and definiteness.
 - c) The lines in all views are too light and blurry. Lines must be clean, sharp, solid and black for a clear disclosure.
 - d) Attention is directed to attached PTO-948 which requires a new drawing.
- Correction is required. 35 USC 112 par. 1, 37 CFR 1.152.
6. A photoprint or photoprints showing the proposed corrections in red ink must be submitted for the Examiner's approval. Care should be exercised to avoid introduction of new matter. (35 U.S.C. 132; 37 CFR 1.118).
 7. Applicant is required to submit a proposed drawing correction in response to this Office action. However, correction of the noted defect can be deferred until the application is allowed by the examiner.
 8. The claim is rejected under 35 U.S.C. 103 as being unpatentable over Maglica patent no. 4658336, Fig.8, in view of Huang.

Although the invention is not identically disclosed or described as set forth in Section 102 of the statute, if the

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differences between the subject matter sought to be patented, and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary ability in the art to which said subject matter pertains, the invention is not patentable.

The Maglica patent, Fig.8, shows a flashlight of essentially the same appearance as the claimed design except for the rounded head. The Huang patent shows a rounded head similar to that of the claimed design.

9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Maglica, Fig.8, flashlight by providing a rounded head as shown by the Huang flashlight to meet the overall appearance of the claimed design.

10. This modification of the basic reference in light of the secondary prior art is proper because the applied references are so related that the appearance of features shown in one would suggest the application of those features to the other. *In re Rosen*, 213 USPQ 347 (CCPA 1982); *In re Carter*, 213 USPQ 625 (CCPA 1982), and *In re Glavas*, 109 USPQ 50 (CCPA 1956). Further, it is noted that case law has held that one skilled in the art is charged with knowledge of the related art; therefore, the combination of old elements, herein, would have been well within the level of ordinary skill. *In re Antle*, 170 USPQ 285 (CCPA 1961) and *In re Nalbandian*, 211 USPQ 782 (CCPA 1982).

11. The remaining references are cited as cumulative art.

Serial No. 411576

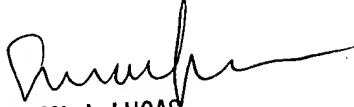
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12. The claim stands rejected under and 35 USC § 103.

13. Any inquiry concerning this communication should be directed to M. Tung at telephone number (703) 603-0505.

M. Tung
November 07, 1990


SUSAN J. LUCAS
EXAMINER
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